IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.738 OF 2007
Along with
Civil Application No.757 of 2007

Shri Kamlakar L Janjirkar, Appellant.
Vs
Shri Dattatraya L Janjirkar
and Anr. Respondents.

Mr S.D.Patil, for the appellant.
Mr Pratapa Patil for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATED : 23rd October, 2007

P.C.:

1. Heard the learned counsel for the parties.

2. By this appeal, defendant no.1 has challenged the judgments of the courts below, by which a suit for possession instituted by respondent-plaintiff has been decreed. Mr.Patil, learned counsel for the appellant, raised three contentions : firstly, the suit was barred by limited; secondly, the suit was not maintainable and thirdly, the trial Court had no jurisdiction to entertain the suit for want of pecuniary jurisdiction.

3. It appears that by a consent decree in a suit between three brothers, viz. appellant-defendant no.1 and the respondent-plaintiff and Sunder, the suit property was allotted to the share of

the plaintiff. The plaintiff, at the relevant time, was working in Mumbai and after his retirement when he went back to Murud, he found that room no.3, the room in dispute, was in possession of defendant no.2, who was inducted in the said room by defendant no.1. Hence,he issued notice to the defendants seeking possession of the said room and immediately thereafter filed a suit. From perusal of the facts, it is very clear that the suit was filed within time and both the courts below have rightly held so. Insofar as other two points are concerned, they were not raised before the courts below. I perused the plaint, so also the judgments of the courts below and, in my opinion, the contention that the suit was not maintainable, has absolutely no merit. Similarly, the issue of pecuniary jurisdiction also has no merit and both the courts below have rightly decreed the suit on the basis of the evidence on record. No interference in this second appeal is called for. Hence, the second appeal is dismissed. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)